

PLANNING COMMISSION

Agenda Item # 2.

LAND DEVELOPMENT CODE AMENDMENT

Planning Commission October 2, 2013

Case: LDC-2-1013

Staff Contact: Angela Faison; angela.faison@wilmingtonnc.gov; 910-341-3248

Staff Recommendation: Approval

Planning Commission Recommendation:

City Council Action:

Request

<i>Code Section(s)</i>	Sections 18-177, 178, 179, 180 and Section 18-300, Schools
<i>Request</i>	<ol style="list-style-type: none"> 1. To create a new category: "Schools, primary and secondary (less than 500 students)" 2. To allow such schools in the R-7, R-10, R-15 and R-20 zoning districts under prescribed conditions rather than by special use permit 3. To amend the prerequisites for schools
<i>Applicant</i>	<p>Friends School of Wilmington, Inc. Laura Williams, Business Manager 350 Peiffer Avenue Wilmington, NC 28409 910.792-1811 lauraw@fsow.org</p>

Case Overview

The Land Development Code (LDC) currently requires a special use permit for primary and secondary schools located in the single-family residential zoning districts. Table 1 below provides a summary how primary and secondary schools are permitted in all zoning districts.

Table 1. Existing Use Schedule for Schools

Use	R - 20	R - 15	R - 10	R -7	R -5	R -3	M F	M H P	M X	H D	H D M U	H D -R	O & I -1	O & I -2	N B	M S M U	C B	R B	C B D	C S	LI	IN D	AI	R F M U	R O	U M X
Schools, primary & secondary	S	S	S	S	S	S	S	-	P	S	-	S	P	P C	-	-	-	-	P	-	-	-	-	-	-	P

Note: P = Permitted by right, PC = Permitted under prescribed conditions, S = Special use permit, "-" = Not a permitted use

ANALYSIS

“Schools, primary and secondary” is defined as “a public, private, or parochial school offering instruction at the elementary, junior, and/or senior high school levels in the branches of learning and study required to be taught in the public schools of the state.” Such schools are permitted in most residential districts upon the issuance of a special use permit. The special use prerequisites for schools are found in Sec. 18-300, and include the following:

- (a) All structures shall have a minimum side and rear yards of fifty (50) feet.
- (b) An off-street drop-off and pick-up area meeting the standards of this chapter shall be provided.
- (c) Directional light fixtures shall be utilized to reduce light pollution and light trespass.

Staff notes that while the applicant is proposing to allow smaller schools by prescribed conditions rather than by special use permit, the proposed amendments Sec. 18-300 would apply to all schools that require a SUP or permitted by prescribed conditions, regardless of enrollment.

1. History/Background

In 2009, the applicant submitted a similar request to amend the LDC for the purpose of allowing primary and secondary schools within residential districts under prescribed conditions and to revise the supplemental development regulations for schools in all residential districts. City Council voted to deny the 2009 request based on concerns regarding building size, student population, need for public hearing review, and traffic and noise impacts.

The proposed amendment includes several revisions to the existing special prerequisites for schools. These revisions are intended to provide additional consideration and protection of adjacent residential uses, as well as to encourage the continued use of existing schools within established neighborhoods.

2. Benchmark research

City Council's identified benchmark cities have been surveyed regarding the permitting of schools in residential zoning districts. Table 2 below provides a summary of how current benchmark cities regulate schools.

Table 2. Benchmark Cities

City	Residential districts in which schools are permitted	How Permitted
Asheville, NC	Allowed in all single family, except Urban Residential	Prescribed conditions and some Commission/Council review based on size
Charleston, SC	All	Rezoning to School Overlay Zone
Chattanooga TN	All	By right
Raleigh, NC	All	By right, public schools Special use permit, private schools (BOA review)
Savannah, GA	All	By special use permit K - 12
Alexandria, VA	All low density	By right
Annapolis, MD	All, except prohibited in historic residential districts	By special use permit
New Bern, NC	All, except prohibited in two residential districts	By conditional use permit
St. Augustine, FL	All	By special use permit
St. Petersburg, FL	All	By right, public schools less than 50,000 sf Special use permit, private schools
Santa Fe, NM	All	By right – public schools Special use permit – private schools

3. Proposed amendments

Following is the proposed amendment to the Land Development Code. Additions are underlined and deletions are in ~~strike through~~. Staff notes that the following proposal represents minor changes to the applicant's initial application.

Amend Article 5, Division II. District Regulations, Section 18-177.

Sec. 18-177. R-20, Residential District.

(c) *Uses permitted under prescribed conditions.*

(11) Schools, primary and secondary (less than 500 students)

(d) *Permitted by special use permit.*

(5) Schools, primary and secondary (500 or more students)

Sec. 18-178. R-15, Residential District.

(c) *Uses permitted under prescribed conditions.*

(11) Schools, primary and secondary (less than 500 students)

(d) *Permitted by special use permit.*

(5) Schools, primary and secondary (500 or more students)

Sec. 18-179. R-10, Residential District.

(c) *Uses permitted under prescribed conditions.*

(10) Schools, primary and secondary (less than 500 students)

(d) *Permitted by special use permit.*

(5) Schools, primary and secondary (500 or more students)

Sec. 18-180. R-7, Residential District.

(c) *Uses permitted under prescribed conditions.*

(10) Schools, primary and secondary (less than 500 students)

(d) *Permitted by special use permit.*

(5) Schools, primary and secondary (500 or more students)

Article 6, Division I. Prescribed conditions, special use prerequisites, and accessory uses and structures, Section 18-300. Schools.

A public or private school shall be subject to the requirements of the district in which located and the following:

- (a) ~~All structures shall have a minimum side and rear yards of fifty (50) feet.~~
Building setbacks:
Minimum thirty (30) feet for front and corner side
Minimum twenty-five (25) feet to the rear
Minimum twenty (20) feet to the interior side
- (b) An off-street drop-off and pick-up area meeting the standards of this ~~chapter~~ Section 18-553 shall be provided.
- (c) Directional light fixtures shall be utilized to reduce light pollution and light trespass.
- (d) When located in a residential zoning district, building height shall be limited to two (2) stories or twenty-five (25) feet, whichever is greater.
- (e) When located in a residential zoning district, required street yards shall be calculated using the same standards as the O&I, Office and Institutional district.
- (f) All buildings, recreation facilities, and off-street parking and service areas shall be screened from residential zoning and uses by a minimum buffer of twenty (20) feet in width. Buffers shall meet the standards of Sec. 18-503 of this chapter. Mobile classrooms may be exempted from this buffer requirement for a period not to exceed one year.
- (g) For schools within the 1945 Corporate Limits of the City of Wilmington: when, in the determination of the City Manager or designee, conditions exist peculiar to the site that prevent the full width of the required street yard or setbacks from being installed, the street yard and setbacks may be reduced up to and including full exemption. Applicable conditions would include but not be limited to: essential site improvements; providing for ingress, egress, and circulation for the site and when structures existing

on the block are within the required street yard or setbacks, and protection of natural and/or historic resources. In these circumstances, the street yard and setbacks shall be reduced only to the width necessary to accommodate such conditions.

CONCLUSIONS

- When proper controls are applied, schools are appropriate uses located in residential areas as they serve the community in which they are located and help provide a sense of identity for the surrounding neighborhood. The intent of the proposed amendments is to allow schools to fit more easily into the fabric of existing neighborhoods.
- The proposed amendment would allow existing schools and expansions with less than 500 students, located in single-family residential zoning districts, to be approved by applying prescribed conditions while schools with 500 or more students would require a special use permit.
- The proposed amendment addresses build-out conditions and infill and redevelopment concerns, particularly for schools located in the urban core of the city by establishing flexibility in the setbacks and street yards for schools located in the 1945 Corporate Limits and by providing flexibility in setbacks, when based on site constraints.
- Staff notes that the average student population of a New Hanover County elementary school is approximately 436 students.

RECOMMENDATION

Primary and secondary schools are currently allowed in residential districts by means of a special use permit. Schools are appropriate uses for residential areas as they serve the community in which they are located and help provide a sense of identity for the surrounding neighborhood. The amendment would allow for the continued use of existing schools in single-family residential areas and strengthen the conditions to which schools must adhere. These additional measures provide protection to adjacent residential properties and improve and protect the quality of life of the surrounding neighborhood. Staff recommends **approval** of the request.

NEIGHBORHOOD CONTACT

	Planning Commission	City Council
<i>Advertisement Date(s)</i>	9/27/13	

General Inquiries: Scott Holmes

ACTIONS TO DATE

Planning Commission:

City Council:

ATTACHMENT(S)

1. Land Development Code amendment application (Received 7/01/13)
2. October 7, 2009 Planning Commission meeting minutes (excerpt)
3. November 4, 2009 City Council meeting minutes (excerpt)

LAND
DEVELOPMENT
CODE AMENDMENT
REQUEST

APPLICATION TO
AMEND THE LAND
DEVELOPMENT
CODE (CHAPTER 18)

The applicant requests that the City of Wilmington Land Development Code be amended as indicated below:

Applicant Information:

Name: Friends School of Wilmington, Inc.

Mailing Address: 350 Peiffer Avenue, Wilmington, NC 28409

Phone: (910) – 792-1811 Fax: (910) 792-9274

Email: lauraw@fsow.org Laura Williams, Business Manager

Applicant Signature: _____

Laura Williams

Action Requested

Article, Division, and Section of Land Development code to be amended (be sure to include all applicable articles and sections):

- Article 5. Zoning District Regulations.
Division II. District Regulations.
Sec. 18-177. Through Sec. 18-180.
(Districts R-20, R-15, R-10, R-7)
(c) Uses Permitted Under Prescribed Conditions

And

- Article 6. Supplemental Development Regulations.
Division I. Prescribed Conditions, ...
Sec. 18-300. Schools.

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PLANNING DIVISION

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CODE (CHAPTER 18)

Wording of proposed text amendment (attach additional sheets as necessary):

- To add a category – “Schools, primary and secondary academic institutions, with less than five-hundred (500) students,” to (c) *Uses Permitted under Prescribed Conditions*. in residential districts R-20, R-15, R-10, R-7.

And

- To revise Sec. 18-300. Schools, as follows:

“A public or private academic school shall be subject to the requirements of the district in which it is located and the following:

- (a) The construction and operation of such facilities shall comply with the provisions of the General Statutes of the State of North Carolina and any other applicable federal, state or local codes, including but not limited to licensing requirements.
- (b) All new schools shall have direct access to a collector or thoroughfare street.
- (c) When located in or abutting a residential district, building setbacks shall be:
 - (1) Minimum thirty (30) feet for front and corner side
 - (2) Minimum twenty-five (25) feet to the rear
 - (3) Minimum twenty (20) feet to the interior side.
- (d) When located in a residential district, the structure shall be limited to a height of two (2) stories or twenty-five (25) feet, whichever is greater.
- (e) A drop-off and pick-up area, meeting the standards of Sec. 18-553. of this chapter, shall be provided.
- (f) Directional light fixtures shall be utilized to reduce light pollution and light trespass.

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CODE (CHAPTER 18)

- (g) When located in a residential district, streetyard requirements shall be calculated by the same standards as if in an O&I-1 district.
- (h) All buildings, outdoor recreational facilities, and off-street parking and service areas will be separated from any abutting residential district or use by a minimum twenty (20) foot wide bufferyard, meeting the standards of Sec. 18-503. of the chapter. However, this condition will not apply to the placement of mobile classrooms at any school for a period of one (1) year from the date of the issuance of a certificate of occupancy for the mobile classrooms. After one (1) year, all applicable buffer and screening requirements must be met unless the subject mobile classrooms have been removed."

Explanation of impacts on the City as a whole and consistency with City plans and policies (Future Land Use Plan, corridor plans, Vision 2020: A Waterfront Downtown, etc.) (attach additional sheets as necessary):

The proposed amendment is limited to Primary and Secondary academic institutions which are referred to as 'Schools' in the following text.

As defined by the City, Residential Districts are those areas in which the principal use of land is for low density residential and recreational purposes. Regulations are intended to discourage any use which would substantially interfere with the development of residences and which would be detrimental to the quiet residential nature of the areas included within the district. Schools, either public or private, are compatible uses providing ease of access to the users with minimal impact to the neighborhoods in which they are situated.

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CODE (CHAPTER 18)

Allowing Schools in residential districts is similar to and consistent with allowing libraries and religious institutions within those districts. The placement of Schools in residential districts, in conformance with prescribed conditions, adds to the stability and security of residential districts.

Schools should be recognized as safeguarded sanctuaries for the City's children, serving the essential educational needs of our community. The restrictive requirement for Schools to be permitted only by special use permit plus the requirement of extensive setbacks applied by the supplemental regulations makes expansions and improvements difficult.

**Justification for amending the Land Development Code as proposed
(attach additional sheets as necessary):**

Allowing Schools to be located in residential districts with prescribed conditions and allowing them to expand and/or upgrade their facilities with certain reasonable restrictions provides stability and security to neighborhoods while recognizing the value and importance of educational institutions. Healthy neighborhoods require the symbiotic relationship of Schools and residents. The City's goal of promoting safe and attractive neighborhoods is strengthened by allowing Schools within residential districts. Providing more flexible development regulations, within prescribed conditions, will allow Schools to locate and/or expand within existing neighborhoods.

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Within CAMA 2006, Issue 3: Environmental Protection/ Quality of Life, one of the goals aimed at ensuring good air quality, is the strategy to “promote compact development and infill that minimizes vehicle trips and vehicle miles traveled with a mix of integrated community uses (e.g., housing, shops, workplaces, schools, parks, and civic facilities) within walking or bicycling distance (3.31.1).”

Allowing Schools to be established and maintained within residential neighborhoods supports the CAMA 2006 goal of incorporating schools within communities, while supporting the goal of recognizing children and their education as this community's highest priority (CAMA goals, pg 10).

Providing Schools with an efficient means of expanding and/or improving their facilities benefits the students and the neighborhoods in which the Schools are situated. Allowing Schools to accommodate the needs of their students while eliminating the necessity of applying for Special Use Permits provides a more efficient use of everyone's time.

PLANNING COMMISSION MEETING MINUTES

October 7, 2009

A meeting of the Wilmington Planning Commission was held on Wednesday, October 7, 2009 at 6:00 p.m. in the City Council Chambers, City Hall, 102 North 3rd Street, Wilmington, NC.

Members Present:

Chm. McKinley Dull
Mr. Corey Barbour
Mr. Keith Betts
Vice Chm. Chris Boney
Mr. Johnnie Henagan
Mr. Haskell Rhett

Members Absent:

None.

Staff Present:

Lynn Coleman, Asst. City Attorney
Ron Satterfield, Planning Manager
Jamison Fair, Senior Planner
Christine Hughes, Senior Planner
Dawn Snotherly, Associate Planner
Corey Taylor, Associate Planner
Michele Cordaro, Administrative Support Specialist

- 6. Land Development Code Amendment - Amend Article 5, Division II. District Regulations, Secs. 18-177, 18-178, 18-179, 18-180, 18-181, 18-182 and 18-184 and Article 6, Division I. Prescribed Conditions, Sec. 18-300 to allow primary and secondary schools within residential districts under prescribed conditions and revise the supplemental development regulations for schools. Brian Chambers, Associate Planner (LDC-3-1009).**

Christine Hughes presented the case summary. The entire case summary is on file in the Planning office and is part of this record. Staff recommended approval of this request based on the information contained in the staff report.

Ms. Hughes stated that Planning and Transportation staff had met with New Hanover County School Board staff to establish the proposed bicycle parking standards.

Ms. Cindee Wolf, agent, spoke in favor of the text amendment. There was general discussion regarding what would be considered a primary entrance. Staff confirmed that if there's no door on a facade, no bike/pedestrian connections are required, even if there's a street on that side of the building.

Chm. Dull opened the public comment portion of the meeting. No one wished to speak and the public comment portion was closed.

Mr. Henagan commented that he opposed the amendment because it would eliminate public input on where schools would be built.

Mr. Boney commented that in his experience the Special Use Permit application process is cumbersome and puts undue restraints on the construction of new schools. Mr. Boney added that he agreed with the staff's proposed revisions and supported the request to amend the code. Chm. Dull concurred.

Mr. Henagan responded that the purview of the Planning Commission is to allow the public to give input on what happens in their neighborhoods and he opposes the amendment because it eliminates public input.

Ms. Hughes confirmed that the New Hanover County School Board staff supported the amendment and that it was the City staff's position that the proposed amendment would benefit neighborhoods by supporting area schools.

Mr. Henagan commented that he feared that in the future the amendment may allow for two or three schools in the same neighborhood and that the residents should have a voice regarding such presence in their community.

Mr. Boney commented that the proposed set back requirements and other restrictions placed on constructing new schools would prevent any negative impact on communities.

Vice Chm. Chris Boney moved to approve the item. It was seconded by Mr. Keith Betts and carried 5-1. Mr. Henagan voted no.

**CITY OF WILMINGTON
CITY COUNCIL MEETING MINUTES
November 4, 2009**

The Council of the City of Wilmington met in regular session on the above date at 6:30 P.M., City Hall, Council Chambers, 102 North Third Street, Wilmington, North Carolina. Those present were: Mayor Bill Saffo, presiding; Councilmembers Laura Padgett, Earl Sheridan, Ronald W. Sparks, Kristi Tomey and Margaret Haynes; City Manager Sterling Cheatham; City Attorney Thomas C. Pollard, and City Clerk Penelope Spicer-Sidbury.

Public hearing was held on Land Development Code Amendment Amend Article 5, Division II. District Regulations, Secs. 18-177, 18-178, 18-179, 18-180, 18-181, 18-182 and 18-184 and Article 6, Division I. Prescribed Conditions, Sec. 18-300 to allow primary and secondary schools within residential districts under prescribed conditions and revise the supplemental development regulations for schools

Ms. Christine Hughes, Senior Long Range Planner, gave the staff report and findings of facts. She stated that the proposed amendment includes several revisions to the existing conditions for schools intended to provide additional consideration and protection of adjacent residential uses and to encourage the continued use of existing schools within the City's neighborhoods. She reported that both staff and the Planning Commission recommend approval of this request.

Ms. Cindee Wolf, Withers and Ravenel, representing the applicant, presented a brief overview of the application.

A question/answer and discussion period followed.

Councilmember Sparks asked if this would apply to child daycare centers.

Ms. Wolf responded that it would not.

Councilmember Haynes stated that she thinks this would open the door for any type of school.

Ms. Hughes commented that this amendment would apply to secondary and primary schools and she read the Code's definition.

Mr. Morris Mastin, Trustee of the Macedonia Fire Baptized Holiness Church of God of the Americas, located at the corner of 5th and Meares Streets, stated that the church wanted to implement a daycare but there were so many "hassels" in obtaining a Special Use Permit or rezoning. He noted that the daycare would be approximately 40 children. He asked how the Council could allow a school of approximately 500 students in an R-5 or R-3 residential zone when a smaller number of daycare students would not be allowed. He asked for clarification.

Ms. Kaye Graybeal, Director of Development Services, responded that it may be an issue that staff will look at in the future but it is not a justification to deny the current request.

Mr. Tom Pollard, City Attorney, stated that currently daycares are allowed in residential districts and that is the reason that the Special Use Permit was placed in the Ordinance because requests were made for daycare and the recognition was that the Council wanted to permit these uses because they provided some convenience. He noted that when they were located in the middle of a residential neighborhood on a single lot then you have people dropping off children in the morning and picking up in the afternoon and if the area isn't large enough then it really can have a substantial impact on a neighborhood.

In response to an inquiry by Mayor Saffo, Mr. Pollard commented that allowing a daycare center at an existing church would be permitting it where other similar uses are permitted.

Ms. Graybeal stated that the next "clean-up" of the Ordinance will be in six months and an amendment could be considered at that time to allow for daycare at existing religious institutions. She stated that it would be best for the Macedonia Fire Baptized Holiness Church of God of the Americas to apply for the amendment.

An unidentified man with the Friends School of Wilmington spoke in favor of the amendment.

Everyone being given an opportunity to be heard, the public hearing was closed.

Councilmember Padgett commented that she would like to see schools in the City's neighborhoods but they are significantly sized institutions and the City would be decreasing the size of the side setbacks on the properties which will bring them closer to the homes in those neighborhoods. She stated that she is not sure it is a good thing to give up the oversight of where and how schools are going to be built in neighborhoods.

A question/answer and discussion period followed.

Following further discussion, Councilmember Padgett made a motion to deny the Ordinance, seconded by Councilmember Tomey and the motion to deny carried 5-1 (Mayor Saffo voted in opposition.)

Land Development Code Amendment – Amend Article 5, Division II. District Regulations, Sec. 18-184(d) and Article 6, Division I. Prescribed Conditions, Special Use Prerequisites, and Accessory Uses and Structures, Secs. 18-267, 18-270, 18-277, and 18-292 to allow "nursing and personal care" as a use permitted by special use permit in the multi-family districts.

Mr. Tom Pollard, City Attorney, requested that Council continue this Item to Council's first meeting in February, 2010 to allow the City Attorney's Office an opportunity to look at the spacing issue raised by the Planning Commission.

Councilmember Sparks made a motion to continue the Item at the request of City Attorney Pollard, to the first meeting in February, 2010 to allow the City Attorney's Office an opportunity to study the spacing issue as requested by the Planning